

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WENDY PADOB,

Plaintiff,

COMPLAINT

- against -

UNUM LIFE INSURANCE COMPANY OF
AMERICA,

08 CV 7199 (AKH)

ECF CASE

Defendant.
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Plaintiff WENDY PADOB, by her attorneys, McCormick Dunne & Foley, as and for a complaint against the above-captioned defendant, alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, and specifically 29 U.S.C. § 1132(a)(1)(B).

2. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1) and (f).

3. Venue is proper pursuant to 29 U.S.C. § 1132(e)(2), because the subject breach took place in the Southern District of New York.

THE PARTIES

4. At all times hereinafter mentioned, plaintiff WENDY PADOB (“PADOB”) was and is a natural person, a citizen of the State of New York and a resident of 320 East 23rd Street, New York, New York.

5. Upon information and belief, at all times hereinafter mentioned, defendant UNUM LIFE INSURANCE COMPANY OF AMERICA (“UNUM”) was

and is a Maryland corporation, and the underwriter and claim administrator of an ERISA-controlled plan affording long-term disability insurance to eligible employees of Time Warner Cable (the “Plan”).

6. As such, in the event that PADOB prevails with regard to her claims herein, UNUM is answerable with respect thereto.

BACKGROUND

7. On a date prior to November 2005, as a benefit of her employment, PADOB became enrolled in the Plan.

8. In or about November 2005, PADOB became “disabled,” as defined by the Plan, and thereafter she timely submitted to UNUM a claim for long-term disability benefits.

9. PADOB’s claim was approved, and UNUM paid benefits to her commencing in May 2006.

10. By letter dated December 6, 2007, PADOB was advised by UNUM that her benefits were being terminated on the ground that, in UNUM’s view, she was no longer “disabled.”

11. By letter dated March 24, 2008, PADOB timely appealed the subject adverse benefit decision.

12. PADOB’s appeal was not decided within ninety (90) days of its submission, and was thus deemed denied by operation of law.

13. PADOB has exhausted her administrative remedies.

AS AND FOR A FIRST CAUSE OF ACTION

14. PADOB repeats and reiterates paragraphs “1” through “13,” as if fully set forth at length herein.

15. The termination of PADOB's benefits was and remains erroneous and in violation of her rights under ERISA, entitling PADOB to be awarded the sum of all long-term disability benefits wrongfully withheld from her from the date of the termination up to and including the date of judgment herein, together with prejudgment interest at a rate to be established by the Court.

16. Additionally, PADOB is entitled to attorney's fees and costs pursuant to 29 U.S.C. § 1132(g)(1).

WHEREFORE PADOB demands judgment:

- (i) awarding her the sum of all long-term disability benefits wrongfully withheld from her from the date of the termination up to and including the date of judgment herein, together with prejudgment interest at a rate to be established by the Court;
- (ii) awarding her attorney's fees and costs pursuant to 29 U.S.C. § 1132(g)(1); and
- (iii) for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
August 13, 2008

Yours, etc.,

MCCORMICK DUNNE & FOLEY

By: s/
Christopher P. Foley (CF 6079)

Attorneys for Plaintiff
Office and P.O. Address
61 Broadway, Suite 1030
New York, New York 10006
(212) 363-1300